

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

TERESA LIGGINS,

Defendants.

4:12CR3057

**FINDINGS AND
RECOMMENDATION**

On referral from the assigned district judge, an evidentiary hearing was held on Defendant's motion for relief under [28 U.S.C. § 2255](#). The sole issue referred to the undersigned magistrate judge was whether Defendant was denied effective assistance of counsel in that her appointed attorney "failed to file a notice of appeal after sentencing, when [she] requested one." [Filing No. 100, at CM/ECF p. 4](#). As stated in Judge Gerrard opinion on initial review:

An attorney's failure to file a notice of appeal upon the client's request constitutes ineffective assistance of counsel, and no specific showing of prejudice is required. . . . Even if the client waived her right to appeal as part of a plea agreement, prejudice is presumed if the client asked her attorney to file a notice of appeal and the attorney did not do so.

[Filing No. 121, at CM/ECF p. 4](#) (citing [United States v. Sellner, 773 F.3d 927, 930 \(8th Cir. 2014\)](#)).

An evidentiary hearing was held on September 29, 2015. Defendant was represented by counsel and testified. Her testimony was concise, clear, and credible: Her lawyer did advise her of the right to appeal, and when he asked if she wanted to appeal her conviction and sentence, she responded, "No." See also Exhibit 1. Defendant explained that she filed the § 2255 motion based on misinformation she received from a fellow inmate, believing the document was actually a direct appeal. She never requested

an appeal within 14 days of her sentencing, and she did not intend to accuse her attorney of providing ineffective assistance for failing to file an appeal. See also Exhibit 1.

There is no evidence supporting a claim of ineffective assistance of counsel for failing to file a requested appeal.

IT THEREFORE HEREBY IS RECOMMENDED to the Honorable John M. Gerrard, United States District Judge, pursuant to [28 U.S.C. § 636\(b\)](#), that Defendant's motion filed pursuant to 28 U.S.C. § 2255, ([Filing No. 119](#)) be denied in its entirety.

The defendant is notified that failing to file an objection to this recommendation as provided in the local rules of this court may be held to be a waiver of any right to appeal the court's adoption of the recommendation.

September 30, 2015.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge

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